



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
KAMALA D. HARRIS
ATTORNEY GENERAL

February 4, 2014

The Honorable John Boehner
Speaker of the House of Representatives
Office of the Speaker
H-232 The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
House Minority Leader
House of Representatives
H-232 The Capitol
Washington, DC 20515

Dear House Speaker Boehner and House Minority Leader Pelosi:

I am writing to express my opposition to H.R. 3964, the Sacramento San Joaquin Valley Emergency Water Delivery Act. Like its 2012 predecessor, H.R. 1873, H.R. 3964 would abrogate long-standing provisions of California law designed to protect the State's natural resources and violate settled constitutional principles of state sovereignty. Furthermore, the legislation would imperil the State's traditional authority to manage its natural resources without providing any meaningful emergency drought relief for the people of California.

After two dry years, Californians are facing potentially the driest year in the State's history. The Sierra Nevada snow pack is 12 percent of normal. Storage levels at Shasta, Folsom, and Oroville reservoirs are below the 1977 drought levels. The California State Water Resources Control Board (SWRCB) and the Department of Fish and Wildlife (DFW) have responded to this drought emergency by agreeing to relax certain water quality standards to ensure that the federal Central Valley Project (CVP) and the State Water Project (SWP) can meet health and human safety requirements and can reasonably protect all beneficial uses of water.

Notwithstanding the prompt and laudable efforts of California's natural resources agencies to address the drought emergency, H.R. 3964 would remove key water resources management powers from these agencies. The legislation would transgress the principles of state sovereignty in at least three important respects. First, the legislation would mandate that the CVP and the SWP operate to fixed water quality standards for the Sacramento-San Joaquin Delta developed almost twenty years ago, and would preclude state authorities from altering such standards. Second, the legislation would prohibit the SWRCB and the DFW from exercising their state law responsibilities to protect fishery resources and public trust values, not only as to CVP and SWP operations, but as to all holders of appropriative water rights in California. Third, the legislation would overturn settled principles of cooperative federalism by vacating the San Joaquin River Restoration Settlement Act and banning the application of State fishery protections to the San Joaquin River operations of the Friant Unit of the CVP.

These proposed constraints on California's ability to manage its natural resources contravene long-standing principles of western water law. In *California v. United States* (1978) 438 U.S. 645, 653 the U.S. Supreme Court affirmed California's ability to impose state law terms and conditions on federal reclamation projects, and declared that, "[t]he history of the relationship between the Federal government and the States in the reclamation of the arid lands of the Western States is both long and involved, but though it runs the consistent thread of purposeful and continued deference to state water law by Congress."

California law grants the SWRCB the continuing authority to review and reconsider all water rights for the purpose of determining whether their exercise would violate the reasonable use requirement of Article X, Section 2 of the California constitution and California's common law doctrine of the public trust. According to the California Supreme Court, "[t]he state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible." (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 446.) The California Legislature has expressly adopted these principles as "the foundation of state water management policy." (Cal. Wat. Code, § 85023.) By abrogating the State's ability to apply these principles to water users, H.R. 3964 contravenes the long-standing history of deference to state water law.

Moreover, H.R. 3964 takes these steps in violation of settled constitutional principles of state sovereignty. Relying upon separation of powers principles set forth in the Tenth Amendment and elsewhere in the U.S. Constitution, the U.S. Supreme Court in *New York v. United States* has held that "congress may not simply 'commandeer[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.'" (*New York v. United States* (1992) 505 U.S. 144, 161, citing *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.* (1981) 452 U.S. 263, 288.) In *Printz v. United States*, the U.S. Supreme Court expanded its ruling in *New York* and declared that "[t]oday we hold that Congress cannot circumvent that prohibition by conscripting the States' officers directly." (*Printz v. United States* (1997) 521 U.S. 898, 935.) According to the court, the constitutional system of dual sovereignty demands that "[t]he Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." (*Id.*)

By compelling the SWP, a state funded and managed water project, to operate based upon congressionally mandated Delta water quality standards, rather than allowing California to develop standards that reflect the most recent scientific information regarding the Delta, H.R. 3964 violates the U.S. Supreme Court's state sovereignty principles. By prohibiting the SWRCB, the DFW or other state agencies from taking action to protect fishery and public trust values other than those mandated by Congress, the legislation further violates these state sovereignty principles. Congressional passage of H.R. 3964 would have, in effect, unconstitutionally "dragooned" state officers "into administering federal law." (*Id.* at p. 928.)

The Honorable John Boehner
The Honorable Nancy Pelosi
February 4, 2014
Page 3

I urge you to reject H.R. 3964. Consistent with the principles of state sovereignty, California's natural resource agencies have timely and responsibly taken measures to address the present drought emergency within the context of California law. It is important that the present legal framework of dual sovereignty for water resources issues be strengthened and preserved, rather than dismantled.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kamala D. Harris", with a long, sweeping horizontal line extending to the right.

KAMALA D. HARRIS
Attorney General